

REMARKS / ARGUMENTS

In the application, no claims currently stand allowed and claims stand 2-19 stand rejected under 35 U.S.C. §103(a) as anticipated by U.S. Patent No. 5,949,776 to Mahany et al. (“Mahany”) in view of U.S. Patent No. 6,600,726 to Nevo et al. (“Nevo”).

The Office action dated July 9, 2004 has been carefully considered. All of the claims have been amended to mirror those claims that have already been deemed to be novel and containing an inventive step during the international preliminary examination of the companion case. If the Examiner wishes to review the arguments made by either the Applicants or the Examiner during the international preliminary examination of the companion case, the Examiner is hereby invited to request the appropriate documents from the Applicants.

Each of the independent claims enumerates three different driver layers: (1) a “connection-independent driver layer”, (2) an “intermediate driver layer” and (3) a “connection-specific driver layer”. Furthermore, each of the independent claims specifies a particular action that is performed by each of the three different driver layers. Specifically, the “connection-independent driver layer” receives “abstracted device control commands and data” and encapsulates them into a “connection-independent format”; the “intermediate driver layer” receives the “encapsulated device control commands and data” and translates them into “connection-specific device control commands and data”; and the “connection-specific driver layer” transmits the “connection-specific device control commands and data” to the network device.

Neither Mahany nor Nevo, either alone or in combination, disclose the three driver layers recited by each of the independent claims. In fact, both Mahany and Nevo only disclose a single driver layer. Furthermore, even if their combination somehow disclosed three driver layers

(which it does not), there is no motivation to combine the teachings of Mahany and Nevo. The Office action, after listing the claim elements that are alleged to be disclosed by Mahany and then Nevo, simply concludes that it would “[t]herefore ... have been obvious ... to apply the technique of Nevo to the communication system of Mahany in order to provide a device that can be operated concurrently in multiple wireless protocols.” Office action dated 7/9/04, page 5. Such conclusory statements have been definitively rejected by the Federal Circuit as insufficient to meet the burden of establishing *prima facie* obviousness. *See In re Lee*, 277 F.3d 1338, 1343 (Fed. Cir. 2002). Furthermore, the stated motivation for combining Mahany and Nevo, namely that such a combination would “provide a device that can be operated concurrently in multiple wireless protocols”, cannot be true since Nevo, by itself, already provides for such a device. *See* U.S. Patent No. 6,600,726 to Nevo et al., col. 1, line 65 – col. 2, line 2 (“A wireless device is provided with ... at least one control manager to transmit and receive signals wirelessly to and from network devices of a first and second wireless network, in a coordinated manner....”)

There Is No Motivation To Combine Mahany With Nevo

The Office action asserts that it would have “been obvious ... to apply the technique of Nevo to the communication system of Mahany in order to provide a device that can be operated concurrently in multiple wireless networks.” Office action dated 7/9/04 at 5. However, Nevo, by itself, provides a “wireless device ... with ... at least one control manager to transmit and receive signals wirelessly to and from network devices of a first and second wireless network, in a coordinated manner....” Nevo at col. 1, line 65 – col. 2, line 2; *see also id.* at col. 3, lines 30-35 (“wireless device 100 is provided with wireless transceivers 102a and 102b to transmit and receive signals wirelessly in accordance with a first and a second wireless communication protocol, to enable device 100 to be communicatively coupled to devices 104a and devices 104b

of wireless networks 108a and 108b respectively.”) Consequently, the concurrent operation of a device in multiple wireless networks cannot provide the motivation to combine Mahany with Nevo, since Mahany does not add anything that aids in the concurrent connection to multiple networks that isn’t already taught by Nevo.

Furthermore, merely listing the claim elements that are alleged to be disclosed by Mahany and Nevo, and then concluding that it would “therefore” have been obvious to combine them, runs afoul of the Federal Circuit’s explicit instruction that “[t]he factual inquiry whether to combine references must be thorough and searching... The need for specificity pervades [the prevailing legal] authority.” Lee at 1343. In the Lee case, the Federal Circuit criticized as insufficient the examiner’s conclusory statement that a combination of cited references would provide certain benefits, thereby making the combination obvious. *See id.* at 1434. In so doing, the Federal Circuit noted that the obviousness inquiry cannot be “resolved on subjective belief using unknown authority.” Id. Rather the, PTO has an obligation and choice to either develop a solid “evidentiary basis” motivating a cited combination, or forego the rejection entirely. Id.

Neither Mahany Nor Nevo Teach or Suggest Three Different Device Driver Layers

Even if Mahany and Nevo were properly combined, there is no teaching or suggestion in either reference, or their combination, for the three different device driver layers recited by each of the independent claims. Neither is there any teaching or suggestion in either reference, or their combination, for the functions performed by the three different device driver layers as also recited by each of the independent claims.

As an initial matter, Applicants note that both Mahany and Nevo are directed to endeavors that are far afield from the goal of the Applicants' invention.¹ For example, Mahany is directed to the linking between larger area wireless networks and more localized networks, such as would be used by wireless peripherals. *See e.g.*, U.S. Patent No. 5,949,776, col. 5, lines 33-53. As such, Mahany focuses on the interaction between the larger wireless network and the more localized wireless network. *See id.* at col. 6, lines 31-35. Consequently, Mahany discloses nothing more than a single device driver layer for a given device, whether it connects to the larger wireless network or the more localized one. *See id.* at col. 49, lines 50-53 ("...the interface 3115, the microprocessor 3120 maintains a radio independent, interface protocol with the attached network device...") The singular "interface 3115", which is even illustrated as a single unit, is the only device driver described in Mahany. *See e.g.*, *id.* at col. 49, line 37 – col. 50, line 27.

The Office action cites item 23 of Figure 1a of Mahany and item 43 of Figure 1b as illustrating the claimed "connection-independent driver layer". *See* Office action dated 7/9/04 at 4. The Office action also cites item 22 of Figure 1a and item 44 of Figure 1b as illustrating the claimed "intermediate driver layer". *See id.* Each of these items is illustrated as nothing more than a tiny box containing the letter "P". *See* Mahany at Figures 1a and 1b. Furthermore, the specification clearly indicates that items 22, 23, 43 and 44 are all "peripheral devices" and not a drivers at all. *See id.* at col. 10, lines 8-9 ("...data transfer destined for a peripheral device 23, such as a printer...") (emphasis added); *see also id.* at col. 10, line 66 ("[e]ach of the peripheral devices 22...") and col. 11, line 61 ("... its respective peripheral devices 43, 44 and 45 ...") (emphasis added). As should be obvious, a "peripheral device" is a hardware element, while a

¹ Nevo does not even use the term "driver" and Mahany only uses it to refer to a human who "drives" a vehicle.

“device driver” is a software element. The two are not the same thing. Thus, while Mahany may disclose multiple hardware devices (“peripherals”), it certainly does not disclose the three layers of software device drivers recited by each of the independent claims.

Nevo similarly discloses only a single device driver layer. For example, Figures 1, 3, 5, 7, 9a and 11a all illustrate wireless devices having only a single “controller manager” layer. *See* Nevo at Figures 1, 3, 5, 7, 9a and 11a (illustrating two “controller managers” that are side-by-side and not layered). Nevo describes the functions of the “controller manager” layer as “control[ling] transmits and receives by wireless transceivers 102a and 102b ... in a coordinated manner.” *See id.* at col. 3, lines 46-47. Because the “controller manager” controls a network device, namely the “wireless transceiver”, it is a “driver”. However, it is the only driver layer disclosed by Nevo and no other driver layers are disclosed, let alone driver layers that perform the functions of the three driver layers claimed by each of the independent claims.

Consequently, because each of the independent claims recite three driver layers not found in any of the cited references, the independent claims are allowable over the prior art of record. Furthermore, because all of the other claims inherit the limitations of the independent claims, they are similarly allowable over the prior art of record.

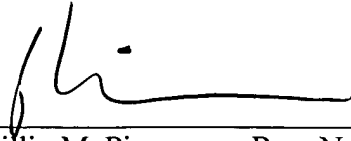
CONCLUSION

The application is considered to be in good and proper form for allowance, and the examiner is respectfully requested to pass this application to issue.

In re Appln. of MOORE et al.
Application No. 09/556,565
Reply to Office action of July 9, 2004

If, in the opinion of the examiner, a telephone conference would expedite the prosecution of the subject application, the examiner is invited to call the undersigned attorney.

Respectfully submitted,



Phillip M. Pippenger, Reg. No. 46,055
One of the Attorneys for Applicants
LEYDIG, VOIT & MAYER, LTD.
Two Prudential Plaza, Suite 4900
180 North Stetson
Chicago, Illinois 60601-6780
(312) 616-5600 (telephone)
(312) 616-5700 (facsimile)

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